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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,986	06/30/2003	Max Lerman	26111-10281	1125
21788	7590	10/30/2007		
RYNDAK & SURI LLP 200 W. MADISON STREET SUITE 2100 CHICAGO, IL 60606			EXAMINER BROWN, MICHAEL A	
			ART UNIT	PAPER NUMBER
			3772	
			MAIL DATE	DELIVERY MODE
			10/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/609,986

Applicant(s)

LERMAN, MAX

Examiner

Michael Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bledsoe.

Bledsoe discloses in figures 1-6 a knee brace comprising an upper leg support 20, a lower leg support 22, a single hinge side 24 (although there are two hinges, there is still only a single hinge on each side), connecting the upper and lower leg supports along a hinge side, the hinge is positionable proximate the first knee compartment for permitting flexion and extension knee movement, a first knee strap 82, having first and second end portions (the first end is at 90 and the second end is at 88), the first end is attachable to the upper leg support (at 90), the second end of the first knee strap is attachable to the lower leg support (at 88), the first strap is adapted to extend above the knee and is wrapped around the back of the knee, a second knee strap 84, having a first end portion (the first end is at 86 and the second end is at 92), the first end is attachable to the upper leg support (at 86), the second end is attachable to the lower leg support (at 92), the second knee strap is adapted to extend above the knee cap (fig. 2B) and wrap around the back of the knee (fig. 5) the first and second knee strap cross proximate the second knee compartment (fig. 5), the first knee compartment doesn't

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contact the knee brace, means (146, 148 and 150) for aligning the hinge mechanism, the hinge further comprises means (196, 198) for restricting flexion and extension movement and a method of applying a corrective unloading force to the knee.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bledsoe in view of Davis.

Bledsoe discloses in figures 1-6, a knee brace, substantially as claimed. However, Bledsoe doesn't disclose the lower leg support having an upper arm, and a lower arm pivotally attached to the upper arm by a pivot joint, wherein the pivot joint includes intermeshing teeth. Davis teaches in figures 1-7, a hip brace comprising a lower leg support 18, having an upper arm 22 and a lower arm 28, pivotally attached to the upper arm by a pivot joint (30 and 32), having intermeshing teeth 34. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the lower support having a first arm, a second arm, and a pivot joint as taught by Davis could be substituted for the lower support arm disclosed by Bledsoe in order to the lower arm support with the pivot joint to provide flexion and extension movements of the knee brace at the lower portion of the user's leg. The method of claim 18 can be performed based on the disclosure in Bledsoe and the teachings of Davis.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Airy '379.

Airy teaches in figure 1 a knee brace comprising an upper leg cuff 26 pivotally attached to an elongated member 46, to permit rotational adjustment of the upper leg cuff, a lower leg cuff 30, pivotally attached to an elongated member 46" to permit rotational adjustment of the lower leg cuff. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the upper cuff and the lower cuff as taught by Airy could be substituted for the upper and the lower cuff disclosed by Bledsoe in order to use the adjustable cuffs to accommodate the legs of patients of various sizes. The elongated members would allow the cuffs to pivot to fit different size legs.

Claims 13-14 and 19-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Bledsoe in view of Airy.

Bledsoe discloses in figures 1-5 a knee brace, substantially as claimed, as set forth above that includes a slot 44 along the upper and lower support members to permit adjusting of the upper and lower support member. Airy teaches in figure 1 a knee brace comprising an upper leg cuff 26 pivotally attached to an elongated member 46, to permit rotational adjustment of the upper leg cuff, a lower leg cuff 30, pivotally attached to an elongated member 46" to permit rotational adjustment of the lower leg cuff. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the upper cuff and the lower cuff as taught by Airy could be substituted for the upper and the lower cuff disclosed by Bledsoe in order to use the

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adjustable cuffs to accommodate the legs of patients of various sizes. The elongated members would allow the cuffs be pivot to fit different size legs. The slots disclosed by Bledsoe permit adjustments to be made to the upper and lower support members. The disclosure of Bledsoe and the teachings of Airy can be used to perform the method recited in claims 19-20

Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Castillo '469.

Castillo teaches in figures 1-2 a knee brace comprising upper and lower leg cuff (fig. 1) and a skin adhesion layer that includes a silicone material (foam rubber). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the skin adhesion layer as taught by Castillo could be incorporated into the leg cuff as taught by Airy in order to used the skin adhesion layer to adhere the cuff to the patient's leg to prevent the cuff from slipping against the patient's leg.

Response to Arguments

Applicant's arguments filed August 8, 2007 have been fully considered but they are not persuasive. Applicant argues that Bledsoe doesn't disclose a single hinge side on the knee brace. However, Bledsoe does disclose one (a single) hinge on each side of the knee brace. Applicant didn't claim a knee brace having two sides with only one hinge on only one side. Applicant simply claimed a single hinge on one side. Applicant argues that Bledsoe nor Davis discloses a knee brace having a single hinge side. However, as set forth above, Bledsoe discloses a knee brace with a single hinge side.

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Applicant argues that Bledsoe nor Airy discloses a knee brace with a single hinge side. However, as set forth above, Bledsoe discloses a knee brace with a single hinge side. Applicant argues that Bledsoe nor Castillo discloses a knee brace with a single hinge side. However, as set forth above, Bledsoe discloses a knee brace with a single hinge side.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael A. Brown/
October 27, 2007